IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH NAGPUR

Second Appeal No. 671/2006

Office Notes, Memoranda of Coram, appearances, Court's orders or directions and Registrar's orders. : Court's or Judge's orders

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CORAM : A.P. Lavande, J.
DATED : December 11, 2006

Having regard to the nature of office objections, the office objections are waived.

By this second appeal, the appellant-original plaintiff challenges the decrees passed by both the Courts below. The suit was filed by the appellant-plaintiff for seeking declaration and injunction against respondents. In the suit it was the case of the plaintiff that on 12.12.2005 respondent no. 2 through its administrator entered into contract with him to collect cattle fees for the Tumsar weekly market as per the agreement and the said agreement was illegally terminated by respondent no.2 on 13.12.2005. The plaintiff filed writ petition No.6513/2005 against action of respondent no.2 terminating the agreement

and the same was dismissed by order dated 8.2.2006 passed by the Division Bench of this Court. However, it was observed in the order that the plaintiff could seek alternate remedy to enforce the agreement by approaching the Civil Court, if so advised. Thereafter the plaintiff filed the above suit which was dismissed by the trial Court pursuant to the application filed by respondent no.2 - defendant no.2 under Sections 9 and 9-A of the Code of Civil Procedure (for short “the Code”). The contention in the said application was that the suit was not maintainable for want of notice under Section 55 of the Maharashtra Agricultural Produce Marketing (Regulation) Act, 1963 (hereinafter referred to as “the Act”). The trial Court up-held the said contention which was also upheld by the lower appellate Court. Hence, the present second appeal is filed.

Mr. Mohta, learned counsel appearing for the appellant submitted that it was not necessary to give notice to respondent no.2 under Section 55 of the Act since respondent

No.2 had already sufficient notice of challenge thrown by the plaintiff to termination of the contract by respondent no.2 in view of filing of writ petition No.6513/2005 by the appellant. In the alternative he submitted that since there was an administrator appointed for respondent no.2, waiver of notice under Section 80 of the Code granted by the trial Court was sufficient compliance and, therefore, a formal notice under Section 55 of the Act was not required to be given to respondent no.2.

I have considered the submissions made by Mr. Mohta.

At the outset, it is pertinent to note that the suit filed for declaration and injunction is in respect of contract which was valid for the period 12.12.2005 till 11.11.2006 i.e. today. In this factual background, in my opinion, the prayer made by the plaintiff is not available to the plaintiff from the midnight of 11.12.2006. In order to justify the relief, a party must satisfy that he has an existing right in his favour on the date when the order is passed. In the present case, even if the argument of

Mr. Mohta is accepted, the matter will have to go back to the trial Court. That being the position, in my opinion, as on 12.12.2006 the suit would become infructuous and, therefore, there is no question of granting any relief in favour of the plaintiff. That apart, I do not find any merit in any of the submissions of Mr. Mohta. Upon a plain reading of Section 55 of the Act, it is clear that notice under Section 55 is mandatory. The mere fact that an administrator is appointed for respondent no.2 would not change the position. The administrator represents the Market Committee and, by no stretch of imagination, a notice to be given under Section 80 of the Code, if waived by the trial Court, can be construed as notice to the administrator of the Market Committee. I do not find any merit in the submission of Mr. Mohta that since respondent no.2 was represented in writ petition no.6513/2005, the same was sufficient compliance of Section 55 of the Act. Section 55 of the Act stipulates the particulars which a notice should contain. In my opinion, the

compliance of Section 55 of the Act is mandatory. The trial Court was absolutely right in holding that the suit was not maintainable for non-service of notice under Section 55 of the Act. Mere waiver of notice under Section 80 of the Code by the Court will not amount to waiver of notice under Section 55 of the Act.

For the reasons aforesaid, I do not find any merit in this appeal. No substantial question of law is involved in the appeal. Hence, the appeal is summarily rejected.

JUDGE

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